

**DRAWING AMENDMENTS**

Please add new Fig. 8 to the application, which is provided as an attached “New Sheet” of drawings. Fig. 8 illustrates an example “braided panel” as described, for example, in original Paragraph 41 of the application.

## REMARKS/ARGUMENTS

Applicant respectfully requests reconsideration of this application and the Office Action dated September 8, 2005.

### **I. General Remarks Regarding the Content of this Amendment**

Upon entry of this Amendment, claims 7-23 and 30-37 will remain pending in this application. Through this Amendment, Applicant has added new Fig. 8 to illustrate a “braided panel” and has amended the specification to refer to this new figure. Original claims 1-6 and 24-29 have been canceled without prejudice or disclaimer by this Amendment. A minor editorial amendment is made in claim 37 (changing it to depend from claim 36). No new matter is included in this Amendment, and no additional claim fees are due as a result of this Amendment.

### **II. Applicant’s Application and Drawings Comply with U.S. PTO Requirements**

In the Office Action, the Office objected to the drawings as allegedly not illustrating all of the claimed features (specifically, for not illustrating a “braided panel”). *See* the Office Action at page 2. Additionally, the Office rejected claims 1-37 as allegedly failing to comply with the enablement requirement of 35 U.S.C. § 112, ¶ 1 for allegedly not adequately describing the “braided panel.” *Id.* at pp. 2-3. Applicant respectfully traverses this objection and rejection and requests reconsideration.

While Applicant does not concede that the original drawings and specification were in any way deficient, in order to expedite prosecution and to facilitate allowance of this application, Applicant submits a new Fig. 8 for this application, which illustrates a portion of a braided panel 122 in the manner described in the original specification. Applicant respectfully submits that the terms “braid” and “braided” are well defined and well understood by those of ordinary skill in the art. New Fig. 8 simply illustrates an example structure in which individual strands of a panel 122 have a braided structure, as expressly described in original Paragraph 41 in the application. Additionally, Applicant points out that original Paragraph 39 in the specification further describes that the plural strand sets 500 and 502 in Fig. 5 may be braided together to form a

braided structure. Of course, new Fig. 8 merely illustrates one example of a braided structure. Any number of strands and any desired braided arrangement may be used without departing from this invention.

Given the well known and well defined term “braided,” in light of new Fig. 8 (which simply illustrates the content of the original specification), Applicant respectfully submits that the drawing objection and the corresponding rejection of claims 1-37 as non-enabled are clearly overcome. Applicant respectfully requests withdrawal of this objection and rejection.

### **III. Applicant’s Claims Patentably Distinguish from the Cited Art**

#### **A. Claims 7-9, 13, and 15 Patentably Distinguish from Bearman**

In the September 8, 2005, Office Action, the Office rejected claims 7, 8, 13, and 15 as allegedly anticipated by U.S. Patent No. 5,288,150 to Bearman (hereinafter “Bearman”). *See* the Office Action at page 3. Additionally, claim 9 was rejected as obvious based on Bearman in view of “Official Notice.” *Id.* at page 4. Applicant respectfully traverses these rejections and requests reconsideration.

Applicant’s claim 7 recites a foot-receiving device that includes a foot-housing member at least partially defining a chamber for receiving a foot and a closure system for holding the foot in the foot-housing member. The recited closure system includes a mesh or braided panel for at least partially holding the foot-receiving device on the foot, wherein the mesh or braided panel at least partially extends around the foot-housing member and conforms to foot shape or position changes. Applicant respectfully submits that Bearman fails to anticipate this claimed arrangement.

Bearman relates to a “tote bag” structure that includes a mesh-like lining 4 that enables sand or other debris to sift through and be removed from the bag via a secondary opening 7. Nothing in Bearman teaches or remotely suggests a foot-housing member defining a chamber for receiving a foot and/or a closure system for holding a foot in a foot-housing member, as recited in Applicant’s claim 7. Bearman quite simply has nothing to do with devices for receiving or housing a foot.

Applicant's dependent claims 13 and 15 even further distinguish the claimed structure from that described by Bearman. Claim 13 recites that the foot-receiving device further includes a secondary closure system for holding a foot in the foot-housing member, and claim 15 further recites that the initially recited "closure system" at least partially covers this secondary closure system. The "secondary closure means 8" described in Bearman allows a user to remove sand or other debris from the tote bag's interior. *See* Bearman at column 2, lines 45-59. Nothing in Bearman teaches or suggests that this "secondary closure means" holds a foot within a foot-housing member as recited in Applicant's claim 13. Moreover, the closure means 12 in Bearman is clearly separate, distinct, and remote from Bearman's secondary closure system 8, and therefore, the closure system 12 does not at least partially cover the secondary closure system 8. Quite to the contrary, Fig. 2 in Bearman illustrates mesh 4 under the secondary closure system 8. Accordingly, Bearman clearly fails to anticipate the structure recited in Applicant's claim 15.

In view of the foregoing, Applicant respectfully submits that the Bearman patent clearly fails to anticipate or render obvious the subject matter of Applicant's claims 7-9, 13, and 15. Withdrawal of these rejections and allowance of these claims are earnestly solicited.

**B. Claims 7-23 and 30-37 Patentably Distinguish from Slasor, Davis, and Towns, Whether Considered Alone or in any Combination**

The Office rejected claims 7, 8, 10, 11, 13-17, 19, 21-23, 30, 31, 33, 34, and 37 as allegedly obvious from the combination of Slasor, U.S. Patent No. 1,382,748 (hereinafter "Slasor"), in view of Davis et al., U.S. Patent No. 6,857,204 (hereinafter "Davis"). *See* the Office Action at page 4. Additionally, claims 9, 12, 18, 20, 32, 35, and 36 were rejected based on these patents and further in view of Towns, et al., U.S. Patent No. 6,532,687 (hereinafter "Towns"). *Id.* at page 5. Applicant respectfully traverses these rejections and requests reconsideration.

As noted above, Applicant's claim 7 recites a foot-receiving device that includes a foot-housing member at least partially defining a chamber for receiving a foot and a closure system for holding the foot in the foot-housing member. The recited closure system includes a mesh or braided panel for at least partially holding the foot-receiving device on the foot, wherein the mesh or braided panel at least partially extends around the foot-housing member and conforms to

foot shape or position changes. Applicant's independent claim 16 recites a piece of footwear, comprising: (a) a sole member; (b) an upper member extending from the sole member and at least partially defining a chamber for receiving a foot; and (c) a closure system for holding the foot in the piece of footwear. Again, the claimed closure system includes a mesh or braided panel for at least partially holding the piece of footwear on the foot, wherein the mesh or braided panel at least partially extends around the upper member and conforms to foot shape or position changes. Neither Slasor nor Davis, whether considered alone or in combination, discloses or suggests these claimed arrangements.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See The Manual of Patent Examining Procedure*, § 2143. In the present case, no *prima facie* case of obviousness has been established at least for the reason that the references do not teach or suggest the claimed "closure system," which includes a mesh or braided panel for at least partially holding the foot-receiving device on the foot.

The Office asserts that elements 10 and/or 25 of Slasor constitute a "closure system." *See* the Office Action at page 4. Elements 10 and 25 in Slasor do not constitute a "closure system" for a foot-receiving device or a piece of footwear. Rather, element 10 in Slasor constitutes a protective cover member for a shoe, and element 25 is an elastic strap that holds the cover member to the shoe. Nothing in Slasor teaches or remotely suggests that elements 10 and 25 are closure members for a foot-receiving device.

Moreover, the Office admits that Slasor fails to describe a closure system including a mesh or braided panel. *See* the Office Action at page 4. Davis suffers from this exact same deficiency. While Davis generally describes footwear including mesh material, notably the closure system of Davis is not constructed to include a mesh or braided panel as described in Applicant's claims 7 and 16. Accordingly, Applicant respectfully submits that the combination

of Slasor and Davis fails to establish *prima facie* obviousness. Withdrawal of the rejections of claims 7 and 16 and their associated dependent claims on this basis is respectfully requested.

Independent method claim 30 recites a method for securing a foot-receiving device to a foot. This claimed method includes: (a) inserting a foot through an opening defined in a foot-housing member of a foot-receiving device; (b) placing a closure system adjacent to at least a portion of the opening, wherein the closure system includes a mesh or braided panel for at least partially holding the foot-receiving device on the foot, wherein the mesh or braided panel at least partially extends around the foot-housing member and conforms to foot shape or position changes; and (c) securing the closure system to hold the foot in the foot-housing member. Dependent claim 31 further recites that the foot-receiving device is a piece of footwear.

For the reasons described above in conjunction with claims 7 and 16, Applicant respectfully submits that the combination of Slasor with Davis fails to teach or suggest the closure system placement and securing steps of claim 30 in which a closure system including a mesh or braided panel is placed and secured for holding a foot in a foot-receiving device. No mesh or braided panel in a closure system is described in either Slasor or Davis.

Applicant further submits that dependent claims 13, 15, 21, and 23, further patentably distinguish from the combination of Slasor and Davis. Claims 13 and 21 recite that the foot-receiving device or article of footwear includes a secondary closure system, and claims 15 and 23 further recite that this secondary closure system is at least partially covered by the other closure system. In the Office Action, the Examiner took “Official Notice” that it is known in the art to use shoe laces and eyelets for closing shoes. *See* the Office Action at page 4. Applicant respectfully submits, however, that there is no motivation, teaching, or suggestion for combining a shoe and eyelet type closure system with the system of Davis. Quite to the contrary, Davis includes extensive disclosure teaching away from this Office proposed modification by describing how his closure system is a substitute and replacement for conventional laces. Davis further teaches directly away from this proposed modification in teaching that his closure system avoids various disadvantages associated with conventional closure systems including conventional laces. *See* Davis, for example, at column 1, line 29 through column 2, line 5. Given this disclosure of Davis teaching away from the Office’s suggested modification,

Applicant respectfully submits that one skilled in the art would not be motivated to combine the closure system of Davis with another secondary closure system, such as conventional laces. Withdrawal of the rejection of these claims on this additional basis is respectfully requested.

The additional combination of Slasor and Davis with Towns does not overcome the deficiencies of Slasor and Davis as described above. More specifically, like Slasor and Davis, Towns does not describe or suggest a closure system including a mesh or braided panel, nor is this patent relied upon by the Office for this purpose. Accordingly, even if combined with Slasor and Davis, the resulting combination of Slasor, Davis, and Towns still does not teach or suggest Applicant's claimed invention.

In view of the foregoing, Applicant respectfully requests withdrawal of these rejections and allowance of claims 7-23 and 30-37.

#### **IV. Conclusion**

Original claims 1-6 and 24-29 are canceled by this Amendment without prejudice or disclaimer in an effort to expedite prosecution and to facilitate allowance of this application. These amendments should not be construed as an admission or concession by Applicant that the Office's rejections were proper and/or that the claims in their original form were not patentable. Applicant reserves all rights with respect to the original and/or canceled claims, including the right to pursue claims of the same or similar scope in the future, *e.g.*, in a continuing application.

If the Examiner believes that a telephone conference or a personal interview will be useful to advance the prosecution of this application and/or place the application in condition for allowance, he is invited to contact the undersigned attorney by telephone.

Applicant believes that no fees are due for entry and consideration of this Amendment. If, however, the Office determines that any fees are required, such as fees under 37 C.F.R. §§ 1.16 or 1.17, or if an extension of time is necessary that is not accounted for in the papers filed with this Amendment, the Commissioner is authorized to debit our Deposit Account No. 19-0733 for any necessary fees, including any necessary extension fees or other fees needed to maintain the pendency of this application.

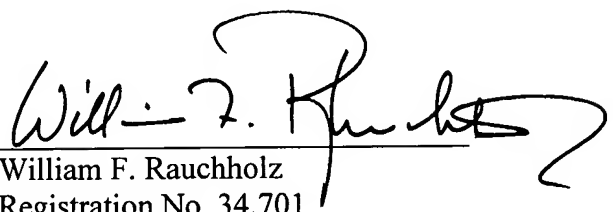
Application of Michael R. Friton – U.S. Patent Appln. No. 10/776,242

All rejections having been addressed, Applicant respectfully submits that this application is in condition for immediate allowance and respectfully solicits prompt notification of the same.

Respectfully submitted,

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Dated: December 8, 2005